



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 14 2008

REPLY TO THE ATTENTION OF:

SC-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Whit Gallagher, President  
House of Flavors, Inc.  
110 North William Street  
Ludington, MI 49431

Re: House of Flavors, Inc., Ludington, Michigan, Consent Agreement and Final Order  
Docket Nos. CERCLA-05-2008-0003 EPCRA-05-2008-0006 MM-05-2008-0002

Dear Mr. Gallagher:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The United States Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on FEB 14 2008.

Please pay the Comprehensive Environmental Response, Compensation, and Liability Act civil penalty in the amount of \$2,068.00 in the manner prescribed in paragraph 75, and reference your check with the billing document number 2750830B004 and the docket number(s) CERCLA-05-2008-0003 MM-05-2008-0002

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$16,729.00 in the manner prescribed in paragraph 76, and reference your check with the billing document number 2750844E008 and the docket number(s) EPCRA-05-2008-0006 MM-05-2008-0002

Your payments are due on MAR 17 2008 (within 30 days of filing date).

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Steven P. Kaiser, Associate Regional Counsel, at (312) 353-8403. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

cc: Regional Hearing Clerk  
U.S. EPA Region 5

Steven P. Kaiser (w/ enclosure)

Captain Eddie Washington, Chairperson (w/ enclosure)  
Susan Parker (w/ enclosure)  
MI SERC

Marcy Toney  
Regional Judicial Officer

Daniel K. DeWitt, Attorney (w/ enclosure)  
Warner Norcross & Judd LLP  
900 Fifth Third Center  
111 Lyon Street, N.W.  
Grand Rapids, MI 49503-2487 (certified)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

CERCLA-05-2008-0003

EPCRA-05-2008-0006

MM-05-2008-0002

IN THE MATTER OF:

House of Flavors, Inc.  
Ludington, Michigan

Respondent

) Docket Nos.  
)  
) Proceeding to Assess a Civil Penalty under  
) Section 109(b) of the Comprehensive  
) Environmental Response, Compensation,  
) and Liability Act, and Sections 325(b)(2)  
) and (c)(1) of the Emergency Planning and  
) Community Right-to-Know Act of 1986

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Consent Agreement and Final Order  
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Sections 325(b)(2) and (c)(1) of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(b)(2) and (c)(1), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is House of Flavors, Inc., a Michigan corporation doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in the CAFO and the terms of the CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemical are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency planning commission (SERC) of any state likely to be affected by a release.

13. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

14. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the SERC, community coordinator for the LEPC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

15. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

16. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, an MSDS.

17. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, subpart Z are hazardous.

18. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b) of EPCRA, 42 U.S.C. § 11045(b) and Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1) authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Sections 304 and 312. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day for violations that occurred after March 15, 2004.

#### **Factual Allegations and Violations**

19. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20. Respondent is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

21. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 110 North William Street, Ludington, Michigan (facility).

22. At all times relevant to this CAFO, Respondent was an employer at the facility.

23. At all times relevant to this CAFO, Respondent was in charge of the facility.

24. Respondent's facility consists of a building, a structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

25. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

27. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

28. Anhydrous ammonia (CAS# 7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

29. Anhydrous ammonia (CAS# 7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

30. Anhydrous ammonia (CAS# 7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. Anhydrous ammonia is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. § 1910, subpart Z, 29 C.F.R. § 1910.1000, Table Z-1.

32. Anhydrous ammonia (CAS# 7664-41-7) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e) and 29 C.F.R. § 1910.1200(c).

33. Anhydrous ammonia (CAS# 7664-41-7) is an "extremely hazardous substance" according to Section 302 of EPCRA, 42 U.S.C. § 11002(a)(2).

34. Anhydrous ammonia (CAS# 7664-41-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

35. At all times relevant to this CAFO, anhydrous ammonia was produced, used or stored at Respondent's facility.

36. Anhydrous ammonia was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

37. During at least one period of time in calendar year 2002 anhydrous ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

38. During at least one period of time in calendar year 2003 anhydrous ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

39. During at least one period of time in calendar year 2004 anhydrous ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

40. OSHA required Respondent to prepare, or have available, an MSDS for anhydrous ammonia.

41. On January 27, 2006, at or about 9:30 p.m., a release occurred from Respondent's facility of approximately 600 pounds of anhydrous ammonia (the Release).

42. In a 24 hour time period, the Release of anhydrous ammonia exceeded 100 pounds.

43. During the Release, approximately 600 pounds spilled, leaked, was pumped, emitted, discharged, or escaped into the navigable water, surface water, land surface, or ambient air or air, water, or land.

44. The Release is a "release" as that term is defined under Section 101(22) of CERCLA 42 U.S.C. § 9601(22).



45. The Release is a "release" as that term is defined under Section 329(8) of EPCRA 42 U.S.C. § 11049(8).

46. Respondent had knowledge of the Release on January 27, 2006, at approximately 9:30 p.m.

47. The Release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

48. The Release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

49. The Release was likely to affect the State of Michigan.

50. At all times relevant to this CAFO, the Michigan State Emergency Response Commission was the SERC for Michigan, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

51. The release was likely to affect Mason County, Michigan.

52. At all times relevant to this CAFO, the Mason County Local Emergency Planning Committee was the LEPC for Mason County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

53. At all times relevant to this CAFO, the Ludington Fire Department was the fire department with jurisdiction over the Facility.

54. Respondent notified the NRC, through the LEPC, of the Release on January 26, 2006, at 11:12 p.m.

55. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the Release.

56. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

57. Respondent notified the Michigan SERC, through the LEPC, of the Release on January 26, 2006, at 11:12 p.m.

58. Respondent did not immediately notify the SERC after Respondent had knowledge of the Release.

59. Respondent's failure to immediately notify the SERC of the Release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

60. Respondent provided written follow-up emergency notice of the Release to the SERC on July 7, 2006.

61. Respondent did not provide the SERC with the written follow-up emergency notice of the Release as soon as practicable after the Release occurred.

62. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the Release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

63. Respondent provided written follow-up emergency notice of the Release to the LEPC on June 1, 2006.

64. Respondent did not provide the LEPC with the written follow-up emergency notice of the Release as soon as practicable after the Release occurred.

65. Respondent's failure to provide written follow-up emergency notice to the LEPC as soon as practicable after the Release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

66. As of June 14, 2006, Respondent had not submitted to the SERC, LEPC, and the Ludington Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia for calendar year 2002.

67. Respondent's failure to submit to the SERC, the LEPC, and the Ludington Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2003, for calendar year 2002 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

68. As of June 14, 2006, Respondent had not submitted to the SERC, LEPC, and the Ludington Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia for calendar year 2003.

69. Respondent's failure to submit to the SERC, the LEPC, and the Ludington Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2004, for calendar year 2003 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

70. As of June 14, 2006, Respondent had not submitted to the SERC, LEPC, and the Ludington Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia for calendar year 2004.

71. Respondent's failure to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

72. Respondent's failure to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

73. Respondent's failure to submit to the Ludington Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Civil Penalty**

74. In consideration of Respondent's cooperation and return to compliance, Respondent's willingness to quickly resolve this matter, Respondent's expenditures on environmentally beneficial projects, and other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$18,797.00.

75. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,068.00 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Financial Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

The check must note the case title of this matter: In the Matter of House of Flavors, Inc., the docket number CERCLA-05-2008-0003 of the CAFO and the billing document number 2750830B004.

76. Within 30 days after the effective date of this CAFO, Respondent must pay a \$16,729.00 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Financial Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check must note the case title of this matter: In the Matter of House of Flavors, Inc., the docket number EPCRA-05-2008-0006 of the CAFO and the billing document number 2750844E008.

77. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the checks and transmittal letter to:

Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

James Entzminger, (SC-6J)  
Chemical Emergency Preparedness  
and Prevention Section  
77 West Jackson Boulevard  
Chicago, IL 60604

Steven P. Kaiser, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

78. This civil penalty is not deductible for federal tax purposes.

79. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

80. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

81. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

82. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

83. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. 9603(a), Section 304 of EPCRA, 42 U.S.C. § 11004, and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

84. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA, and other applicable federal, state and local laws, and regulations.

85. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA and Sections 304 and 312 of EPCRA.

86. The terms of this CAFO bind Respondent and its successors, and assigns.

87. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

88. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

89. This CAFO constitutes the entire agreement between the parties.

**SIGNATORIES**

**House of Flavors, Inc., Respondent**

Date: 1/15/08

By: W.W. Gallagher  
Signature

W.W. Gallagher President  
Printed Name and Title

**U.S. Environmental Protection Agency, Complainant**

Date: 2/5/08

By: Jason H. El-Zein, Acting Chief  
Jason H. El-Zein, Acting Chief  
Emergency Response Branch 1  
Superfund Division  
U.S. EPA Region 5

Date: 2/6/08

By: Richard K. Karl, Director  
Richard K. Karl, Director  
Superfund Division  
U.S. EPA Region 5

**Consent Agreement and Final Order  
IN THE MATTER OF:  
House of Flavors, Inc.  
Ludington, Michigan  
Docket Nos. CERCLA-05-2008-0003**

**EPCRA-05-2008-0006 MM-05-2008-0002**

**Consent Agreement and Final Order**

**IN THE MATTER OF:**

**House of Flavors, Inc.**

**Ludington, Michigan**

**Docket Nos. CERCLA-05-2008-0003**

**EPCRA-05-2008-0006**

**MM-05-2008-0002**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

Date: \_\_\_\_\_

2-13-08

By: \_\_\_\_\_



Mary A. Gade

Regional Administrator

U.S. Environmental Protection Agency, Region 5

77 West Jackson Boulevard

Chicago, Illinois 60604



Consent Agreement and Final Order  
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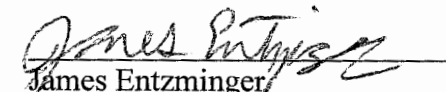
Certificate of Service

I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order, docket numbers CERCLA-05-2008-0003 EPCRA-05-2008-0006 MM-05-2008-0002 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to House of Flavors, Inc. and its counsel by placing them in the custody of the United States Postal Service addressed as follows:

Whit Gallagher, President  
House of Flavors, Inc.  
110 North William Street  
Ludington, MI 49431

Daniel K. DeWitt, Attorney  
Warner Norcross & Judd LLP  
900 Fifth Third Center  
111 Lyon Street, N.W.  
Grand Rapids, MI 49503-2487

on the 14 day of February, 2008.

  
James Entzminger  
U.S. Environmental Protection Agency  
Region 5

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